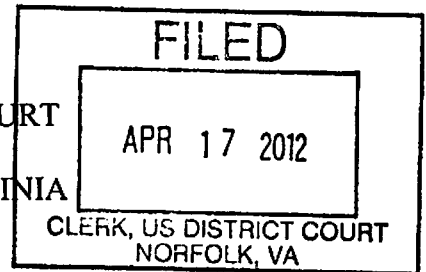


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division



UNDER SEAL

UNITED STATES OF AMERICA	)	CRIMINAL NO. 2:12cr 55
)	
	)	18 U.S.C. § 371
	)	Conspiracy To Commit Wire Fraud
	)	(Count One)
v.)	
	)	18 U.S.C. § 1001
	)	False Statement
	)	(Count Two)
ERIC H. MENDEN,)	
	)	18 U.S.C. § 371
Defendant.	)	Conspiracy to Commit Bank Fraud
	)	(Count Three)
)	
	)	18 U.S.C. §§ 981 & 982, 21 U.S.C. § 853(p)
	)	Criminal Forfeiture

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

COUNT ONE

(Conspiracy To Commit Wire Fraud)

A. INTRODUCTION

At all times material to this information:

1. ERIC H. MENDEN, the defendant, and Conspirator A purchased buildings in historic neighborhoods with the purpose of rehabilitating such properties to obtain federal and state historic rehabilitation tax credits. Their principal place of business was located at the Wainwright Building, 229 West Bute Street, Norfolk, Virginia 23510.

2. The United States Department of the Interior, National Park Service (“National Park Service”) administers the Federal Historic Preservation Tax Incentives program. This program allows property owners to obtain a tax credit equal to 20 percent of certified rehabilitation expenses. The National Park Service administers this program in partnership with the Internal Revenue Service (“IRS”) and the Virginia Department of Historic Resources (“VDHR”).

3. The VDHR administers the Virginia Historic Rehabilitation Tax Credit program. This program allows property owners to receive a state tax credit equal to 25 percent of certified rehabilitation expenses.

4. In Virginia, the National Park Service administers its historic rehabilitation tax credit program in conjunction with the VDHR. The National Park Service and the VDHR both use the following three-step application process to administer their programs:

- (a) Historic Preservation Certification Application – Part 1: To begin the application process, the property owner must complete and file the National Park Service’s Historic Preservation Certification Application, Part 1. Part 1 determines whether the property satisfies the legal definition of “certified historic structure” and thereby qualifies for historic rehabilitation tax credits. After receiving Part 1 approval, the property owner is eligible to move forward in the application process. It is not unusual for a property owner to file Part 1 and Part 2 of the application process at the same time.
- (b) Historic Preservation Certification Application – Part 2: To satisfy the second step in the application process, the property owner must complete and file the Historic Preservation Certification Application, Part 2. Part 2 determines whether the proposed plan for rehabilitation of the certified historic structure is consistent with the Secretary of the Interior’s Standards for Rehabilitation. The National Park Service delegates to VDHR the analysis of whether the proposed plan satisfies these standards and qualifies as a “certified rehabilitation.”
- (c) Historic Preservation Certification Application – Part 3: After receiving approval for Part 1 and Part 2, the property owner must complete and file the Historic Preservation Certification Application, Part 3. The National Park Service typically submits its Part 3 forms to VDHR for review and processing. Part 3 requires the applicant to provide the date when work was completed, and to

estimate the costs attributed solely to the rehabilitation of the historic structure. When costs exceed \$100,000, the property owner must provide a report prepared by a certified public accountant certifying the costs attributed to the rehabilitation of the historic structure. If the National Park Service and VDHR are satisfied that the completed rehabilitation is consistent with the Secretary of the Interior's Standards for Rehabilitation, then the project is designated a "certified rehabilitation." After obtaining this designation, the National Park Service and VDHR notify the property owner of the amount of federal and/or state historic rehabilitation tax credits awarded to the project.

B. THE CONSPIRACY

5. From in or about January 20, 2006 through in or about August 2011, the exact dates being unknown, in the Eastern District of Virginia and elsewhere, ERIC H. MENDEN, the defendant and others, known and unknown, knowingly and intentionally combined, conspired, confederated and agreed together with each other to commit an offense against the United States, to wit: wire fraud, that is, to devise and intend to devise any scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing said scheme and artifice knowingly caused to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, and pictures, that is, wire transfers, in furtherance of a historic rehabilitation tax credit fraud scheme, in violation of Title 18, United States Code, Sections 1343 and 2.

C. THE PURPOSE OF THE CONSPIRACY

6. The purpose of the conspiracy was to obtain federal and state historic rehabilitation tax credits through materially false and fraudulent pretenses.

7. A further purpose of the conspiracy was to transfer these fraudulent tax credits to unsuspecting corporate investors in exchange for millions of dollars.

D. THE WAYS, MANNER AND MEANS OF THE CONSPIRACY

The ways, manner and means by which the defendant and his conspirators sought to accomplish the conspiracy included, but were not limited to, the following:

8. ERIC H. MENDEN and Conspirator A borrowed funds from financial institutions to purchase properties that could qualify for historic rehabilitation tax credits. Thereafter, ERIC H. MENDEN and Conspirator A typically formed a limited liability company to hold the property and conduct business related to the property.

9. ERIC H. MENDEN completed Historic Preservation Certification Applications to apply for federal and state historic rehabilitation tax credits. ERIC H. MENDEN and Conspirator A filed these Historic Preservation Certification Applications with the National Park Service and VDHR.

10. ERIC H. MENDEN and Conspirator A hired certified public accountants located in Cleveland, Ohio to prepare a Historic Rehabilitation Tax Credit Cost Certification Report for each rehabilitation project.

11. ERIC H. MENDEN, Conspirator A, and others known and unknown falsified spreadsheets that detailed the costs of rehabilitating the historic properties. These spreadsheets had little to no correlation to the actual costs of the renovations.

12. ERIC H. MENDEN, Conspirator A, and others known and unknown created fake invoices, bank statements, certificates of occupancy and other documents to support the renovation costs outlined in the spreadsheets. The conspirators sent the falsified spreadsheets and other fabricated documents to their accountant via e-mail and facsimile in interstate commerce. The accountants then prepared the Historic Rehabilitation Tax Credit Cost Certification Reports.

13. Upon purported completion of each project, ERIC H. MENDEN and Conspirator A submitted the false Historic Rehabilitation Tax Credit Cost Certification Reports and other fabricated documents to the National Park Service and VDHR.

14. Based on these false submissions, the National Park Service and VDHR awarded millions of dollars in historic rehabilitation tax credits to entities controlled by ERIC H. MENDEN and Conspirator A.

15. ERIC H. MENDEN and Conspirator A entered into agreements with investment funds operated and controlled by a tax credit broker in San Francisco, California to transfer the historic rehabilitation tax credits to investors in exchange for millions of dollars.

16. ERIC H. MENDEN and Conspirator A did not disclose to the tax credit broker or to the funds' investors that the conspirators planned to obtain, and, in some circumstances, did obtain the federal and state historic rehabilitation tax credits through fraudulent means.

17. ERIC H. MENDEN and Conspirator A transferred the federal and state historic rehabilitation tax credits obtained – and, in some circumstances, tax credits that had not yet been obtained – to the tax credit broker's investment funds. When they transferred these credits, ERIC H. MENDEN and Conspirator A knew that they were fraudulently obtained. The tax credit broker then transferred the federal and state historic rehabilitation tax credits through its investment funds to corporate investors.

18. ERIC H. MENDEN and Conspirator A caused the tax credit broker to send millions of dollars through interstate wire transfers into bank accounts in Norfolk and Chesapeake Virginia owned and controlled by ERIC H. MENDEN and Conspirator A.

19. ERIC H. MENDEN and Conspirator A split the proceeds of the fraud and used the money for their own personal purposes.

20. As a result of the conspiracy, corporate investors prepared and filed federal and state tax returns deducting millions of dollars in historic rehabilitation tax credits that ERIC H. MENDEN and Conspirator A fraudulently obtained.

21. As a result of the conspiracy, the United States of America and the Commonwealth of Virginia suffered substantial losses when corporate investors deducted millions of dollars in fraudulently obtained historic rehabilitation tax credits.

E. OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

In furtherance of the conspiracy and to effect the purpose thereof, the following overt acts, among others, were committed in the Eastern District of Virginia and elsewhere:

James Madison Hotel -- 345 Granby Street, Norfolk, Virginia

(a) Overt Acts Related To Federal And State Historic Tax Credit Applications

22. On or about January 20, 2006, ERIC H. MENDEN and Conspirator A obtained a loan from the Bank of the Commonwealth to purchase and renovate the old James Madison Hotel located at 345 Granby Street in Norfolk, Virginia. ERIC H. MENDEN and Conspirator A formed 345 Granby, LLC to hold the property and to serve as the business entity controlling the rehabilitation project.

23. On or about April 14, 2006, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 1 with VDHR to determine whether this project could qualify for state historic rehabilitation tax credits. On or about May 15, 2006, VDHR concluded that the property located at 345 Granby Street was a "certified historic structure" and could qualify for state historic rehabilitation tax credits.

24. On or about June 5, 2006, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 2 with VDHR. The application described the proposed renovations and estimated the renovations would cost \$11,000,000. On or about September 28, 2007, VDHR approved Part 2 of the application concluding that the proposed renovations to 345 Granby Street were acceptable and met the Secretary of the Interior's Standards for Historic Preservation.

25. On or about January 8, 2008, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed Historic Preservation Certification Applications, Part 1 and Part 2 with the National Park Service to determine whether this project could qualify for federal historic rehabilitation tax credits. Again, ERIC H. MENDEN estimated that the renovations would cost \$11,000,000. On or about January 15, 2008, the National Park Service concluded that 345 Granby Street was a "certified historic structure" and could qualify for federal historic rehabilitation tax credits.

26. Between in or about December 2009 and on or about February 12, 2010, ERIC H. MENDEN, Conspirator A, and others known and unknown, created spreadsheets purporting to outline construction costs for 345 Granby Street. In fact, these spreadsheets had little to no correlation to the actual costs of the renovations. ERIC H. MENDEN and Conspirator A then provided these falsified spreadsheets to accountants located in Cleveland, Ohio who were to prepare a Historic Rehabilitation Tax Credit Cost Certification Report. When the accountants requested documents to support the costs set forth in the spreadsheets, ERIC H. MENDEN, Conspirator A, and others known and unknown, created fake invoices, bank documents, certificates of occupancy, and other documents. The accountants prepared the Historic Rehabilitation Tax Credit Cost Certification Report dated February 12, 2010 based wholly on these false submissions.

27. On or about February 12, 2010, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with VDHR. In this application, ERIC H. MENDEN falsely stated that the renovation of 345 Granby Street actually cost \$22,558,518. To support this claim, ERIC H. MENDEN submitted the accountants' Historic Cost Certification Report which certified that the total qualified rehabilitation expenditures for the project were \$22,558,518. At the time of its submission, ERIC H. MENDEN and Conspirator A were well aware that the accountants' report was entirely false.

28. On or about February 24, 2010, based on the fraudulent materials submitted to support the application, VDHR concluded that the 345 Granby Street project was a "certified rehabilitation" and awarded \$5,639,629.50 in state historic rehabilitation tax credits to 345 Granby, LLC.

29. On or about March 3, 2010, on behalf of 345 Granby, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with the National Park Service. In this application, ERIC H. MENDEN falsely stated that the renovation of 345 Granby Street actually cost \$22,558,518. Again, ERIC H. MENDEN submitted the accountants' false Historic Cost Certification Report to support the application.

30. On or about May 11, 2010, the National Park Service informed ERIC H. MENDEN and Conspirator A that the 345 Granby Street project did not meet the Secretary of Interior's Standard for Rehabilitation. Therefore, the project did not qualify as a "certified rehabilitation" and was not eligible for the 20 percent tax credit for historic properties. The National Park Service has not awarded federal historic tax credits for the 345 Granby Street project.

(b) Overt Acts Related To Corporate Investors

31. Between in or about August 2006 and on or about November 5, 2010, ERIC H. MENDEN and Conspirator A negotiated with the tax credit broker to finalize the terms of an agreement whereby ERIC H. MENDEN and Conspirator A would transfer the federal and state historic rehabilitation tax credits they expected to receive for 345 Granby Street to investors in exchange for substantial cash payments. During these negotiations, ERIC H. MENDEN and Conspirator A represented that these federal and state tax credits would be legitimate, and not wholly based on fraud.

32. On or about May 9, 2008, ERIC H. MENDEN and Conspirator A executed several agreements related to the transfer of the tax credits in exchange for cash payments. Many of these agreements contained promises that ERIC H. MENDEN and Conspirator A were abiding by all laws and regulations relating to the rehabilitation of 345 Granby Street. ERIC H. MENDEN and Conspirator A signed these documents all the while knowing that they were pursuing federal and state tax credits through fraudulent means.

33. On or about November 19, 2008, the tax credit broker caused an investment fund to send three wires totaling \$1,968,010 from an account in California to bank accounts in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used a portion of these funds for their own personal purposes.

34. Between in or about November 2008 and in or about November 2010, ERIC H. MENDEN and Conspirator A provided false invoices, altered bank statements, and other fraudulent documents to the tax credit broker to mask their personal financial problems and to create the appearance that they would eventually obtain a substantial amount of legitimate federal and state tax credits for the 345 Granby Street project.

35. On or about February 24, 2010, ERIC H. MENDEN transferred \$5,639,629.50 in fraudulently obtained Virginia historic rehabilitation tax credits to various investment funds. That same day, the tax credit broker transferred these credits from the investment funds to three specific corporate investors. The three corporate investors subsequently used the fraudulently obtained \$5,639,629.50 in state historic rehabilitation tax credits to decrease their tax obligations to the Commonwealth of Virginia.

36. On or about March 11, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$1,079,786.78 from an account in California to a bank account in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A.

37. On or about March 19, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$2,339,946.81 from an account in California to a bank account in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A.

38. On or about April 16, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$1,177,769.98 from an account in California to a bank account in Norfolk, Virginia controlled by ERIC H. MENDEN and Conspirator A.

39. On or about April 16, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$439,455.19 from an account in California to an escrow account at the Branch Banking & Trust Company for Pioneer Title, LLC. ERIC H. MENDEN and Conspirator A used these fraudulently obtained monies to pay mechanics liens, judgments and past due taxes related to 345 Granby Street.

40. On or about November 5, 2010, the tax credit broker caused an investment fund to send one wire in the amount of \$979,100 from an account in California to a bank account in Chesapeake, Virginia controlled by ERIC H. MENDEN and Conspirator A.

41. A corporate investor claimed approximately \$4,506,741 in federal historic rehabilitation tax credits to decrease its 2010 federal tax liability even though the National Park Service has not awarded federal historic rehabilitation tax credits for the 345 Granby Street project.

Mercer Apartments – 742 West Princess Anne Road, Norfolk, Virginia

(a) Overt Acts Related To Federal Historic Tax Credit Applications

42. In or about 2006, ERIC H. MENDEN and Conspirator A purchased the Mercer Apartments located at 742 West Princess Anne Road in Norfolk, Virginia. ERIC H. MENDEN and Conspirator A formed Mercer Building, LLC to hold the property and to serve as the business entity controlling the rehabilitation project.

43. On or about March 19, 2008, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed Historic Preservation Certification Application, Part 1 with VDHR to determine whether this project could qualify for federal and state historic rehabilitation tax credits. On or about May 13, 2008, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed the same application with the National Park Service. On or about May 14, 2008, the National Park Service approved Part 1 of this application.

44. On or about January 9, 2009, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed Historic Preservation Certification Application, Part 2 with the VDHR. The application described the proposed renovations and estimated that the renovations would cost \$3,400,000. On or about March 2, 2009, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed the same application with the National Park Service. On or about March 26, 2009, the National Park Service conditionally approved the proposed plans for rehabilitation.

45. From on or about December 23, 2009 through on or about January 21, 2011, ERIC H. MENDEN, Conspirator A and others known and unknown created spreadsheets purporting to outline construction costs for the Mercer Apartments. In fact, these spreadsheets had little to no correlation to the actual costs of the renovations. ERIC H. MENDEN and Conspirator A then provided these falsified spreadsheets to accountants located in Cleveland, Ohio who were to prepare a Historic Rehabilitation Tax Credit Cost Certification Report. When these accountants requested documents to support the costs set forth in the spreadsheets ERIC H. MENDEN, Conspirator A and others known and unknown created false invoices, bank documents, certificates of occupancy, and other documents. The accountants prepared the Historic Rehabilitation Tax Credit Cost Certification Report dated January 21, 2011 based wholly on these false submissions.

46. On or about February 10, 2011, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with VDHR. In this application, ERIC H. MENDEN falsely stated that the renovation of the Mercer Apartments actually cost \$4,570,955. To support this claim, ERIC H. MENDEN submitted the accountants' Historic Cost Certification Report which certified that the total qualified rehabilitation expenditures for the project were \$4,570,955. At the time of its submission, ERIC H. MENDEN and Conspirator A were well aware that the accountants' report was entirely false.

47. On or about February 23, 2011, on behalf of Mercer Building, LLC, ERIC H. MENDEN filed a Historic Preservation Certification Application, Part 3 with the National Park Service. In this application, ERIC H. MENDEN falsely stated that the renovation of the Mercer Apartments actually cost \$4,570,955.

48. On or about March 14, 2011, VDHR sent a letter to ERIC H. MENDEN requesting additional support for various expenditures.

49. On or about April 11, 2011, ERIC H. MENDEN sent a response to VDHR explaining these expenditures and attaching as support false invoices and other altered documents. On or about May 9, 2011, ERIC H. MENDEN filed another Part 3 application again certifying the false expenditures.

50. To date, neither the National Park Service nor VDHR has approved federal or state historic rehabilitation tax credits for the Mercer Apartments.

(b) Overt Acts Related To Corporate Investors

51. Between in or about November 2008 and May 21, 2010, ERIC H. MENDEN and Conspirator A negotiated with the tax credit broker to finalize the terms of an agreement whereby ERIC H. MENDEN and Conspirator A would transfer the federal and state historic rehabilitation tax credits they expected to receive for the Mercer Apartments to investors in exchange for substantial cash payments. During these negotiations, ERIC H. MENDEN and Conspirator A represented that these federal and state tax credits would be legitimate, and not wholly based on fraud.

52. On or about December 23, 2009, ERIC H. MENDEN and Conspirator A executed several agreements related to the transfer of the tax credits in exchange for cash payments. Many of these agreements contained promises that ERIC H. MENDEN and Conspirator A were abiding by all laws and regulations relating to the rehabilitation of the Mercer Apartments. ERIC H. MENDEN and Conspirator A signed these documents all the while knowing that they were pursuing federal and state tax credits through fraudulent means.

53. Between in or about November 2008 and May 21, 2010, ERIC H. MENDEN and Conspirator A provided false documents to the tax credit broker to create the appearance that they would obtain a substantial amount of legitimate federal and state rehabilitation credits for the Mercer Apartments rehabilitation.

54. On or about May 21, 2010, the tax credit broker caused an investment fund to send one wire for \$248,689.82 from an account in California to a bank account in Virginia controlled by ERIC H. MENDEN and Conspirator A. ERIC H. MENDEN and Conspirator A used these funds for their own personal purposes.

55. A corporate investor claimed approximately \$928,007 in federal historic rehabilitation tax credits to decrease its federal tax liability even though the National Park Service has not awarded federal historic rehabilitation tax credits for the Mercer Apartments project.

(In violation of Title 18, United States Code, Section 371).

COUNT TWO
(False Statement)

On or about March 3, 2010, in the Eastern District of Virginia and elsewhere, in a matter within the jurisdiction of the executive branch of the Government of the United States, that is, the United States Department of the Interior, National Park Service, defendant ERIC H. MENDEN did willfully and knowingly make and cause to be made a materially false, fictitious, and fraudulent statement and representation, in that defendant ERIC H. MENDEN, in a Historic Preservation Certification Application, estimated that \$22,558,518 was spent rehabilitating historic property located at 345 Granby Street, Norfolk, Virginia when, in fact, he knew that such estimate was materially false.

(In violation of Title 18, United States Code, Section 1001(a)(2)).

COUNT THREE
(Conspiracy To Commit Bank Fraud)

A. INTRODUCTION

At all times material to this information:

1. The Bank of the Commonwealth (the "Bank"), headquartered in Norfolk, Virginia, was the sole business of Commonwealth Bankshares, Inc., whose securities were traded on the Nasdaq Stock Exchange under trading symbol "CWBS." The Bank was a financial institution with deposits insured by the Federal Deposit Insurance Corporation.

B. THE CONSPIRACY

2. From in or about January 2008 through in or about August, 2011, the exact dates being unknown, in the Eastern District of Virginia and elsewhere, ERIC H. MENDEN, the defendant, knowingly and intentionally combined, conspired, confederated and agreed with others known and unknown to commit an offense against the United States, to wit: bank fraud, that is, to knowingly execute, a scheme and artifice to defraud a financial institution and to obtain any of the moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of, a financial institution, by means of materially false and fraudulent pretenses, representations, and promises in violation of Title 18, United States Code, Section 1344.

C. THE PURPOSE OF THE CONSPIRACY

3. The purpose of the conspiracy was for the defendant and other conspirators to perform favors for Bank insiders in exchange for preferential treatment to the detriment of the Bank.

4. It was a further purpose of the conspiracy for the defendant and other conspirators, to help Bank insiders fraudulently conceal the extent of the Bank's non-performing assets by purchasing Bank-owned property again to the detriment of the Bank.

D. THE WAYS, MANNER AND MEANS OF THE CONSPIRACY

The ways, manner and means by which the defendant and his conspirators sought to accomplish the conspiracy included, but were not limited to, the following:

5. Conspirator B and Conspirator C, Bank insiders, caused the Bank to fund construction draws from a loan knowing ERIC H. MENDEN and Conspirator A intended to use the proceeds for their own personal purposes, and to enable ERIC H. MENDEN and Conspirator A to make payments on all of their financial obligations to the Bank, including interest only payments on past due accounts.

6. At the request of Conspirator B, a Bank insider, ERIC H. MENDEN and Conspirator A purchased numerous properties owned by Conspirator D, another Bank insider. The conspirators caused the Bank to finance these purchases to the detriment of the Bank.

7. At the request of Conspirator B, ERIC H. MENDEN and Conspirator A directly purchased, or purchased through nominee borrowers, numerous pieces of Bank-owned property. The conspirators caused the Bank to finance these purchases to the detriment of the Bank.

8. At the request of Conspirator B, ERIC H. MENDEN and Conspirator A placed bids at auctions of Bank-owned property in an effort to inflate the purchase price and to ensure that the Bank did not suffer a loss.

9. ERIC H. MENDEN and Conspirator A paid for renovations to Conspirator C's kitchen.

10. Conspirator B and Conspirator C caused the Bank to fund approximately \$41,000,000 in loans often under favorable terms to ERIC H. MENDEN and Conspirator A.

11. As a result of the conspiracy, the Bank suffered substantial losses.

E. OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

In furtherance of the conspiracy and to effect the purpose thereof, the following overt acts, among others, were committed in the Eastern District of Virginia and elsewhere:

345 Granby Street

12. In or about January 2006, ERIC H. MENDEN and Conspirator A obtained a \$16,000,000 loan from the Bank for the purchase and renovation of property located at 345 Granby Street in Norfolk, Virginia. From in or about 2006 to in or about December 2009, ERIC H. MENDEN and Conspirator A submitted construction draw requests to the Bank for work purportedly completed at 345 Granby Street. The draw requests substantially inflated the amount owed subcontractors and included work that was not completed.

13. Conspirator C caused the Bank to fund these construction draws without verifying that the work was actually completed or the costs itemized in the draw requests were accurate. ERIC H. MENDEN and Conspirator A then deposited loan proceeds in the 345 Granby LLC demand deposit account.

14. On or about May 22, 2008, Conspirator C authorized the Bank to cash a \$250,000 check written to ERIC H. MENDEN from the 345 Granby LLC demand deposit account. That same day, Conspirator C authorized the Bank to cash a \$250,000 check written to Conspirator A from the 345 Granby LLC demand deposit account. The conspirators all knew that these funds were to be used solely for the renovation of 345 Granby Street. Instead, ERIC H. MENDEN and Conspirator A used these loan proceeds for their own personal purposes.

15. On or about November 21, 2008, Conspirator C authorized the Bank to cash a \$100,000 check written to ERIC H. MENDEN from the 345 Granby LLC demand deposit account. That same day, Conspirator C authorized the Bank to cash a \$100,000 check written to Conspirator A from the 345 Granby LLC demand deposit account. The conspirators all knew that these funds were to be used solely for the renovation of 345 Granby Street.

16. On or about January 15, 2009, Conspirator C authorized the Bank to cash a \$150,000 check written to ERIC H. MENDEN from the 345 Granby LLC demand deposit account. That same day, Conspirator C authorized the Bank to cash a \$150,000 check written to Conspirator A from the 345 Granby LLC demand deposit account. The conspirators all knew that these funds were to be used solely for the renovation of 345 Granby Street. Instead, ERIC H. MENDEN and Conspirator A used these loan proceeds for their own personal purposes.

17. On or about June 11, 2009, Conspirator C caused the Bank to fund a \$339,342.12 construction draw on the 345 Granby Street loan. This brought the outstanding principal balance on the 345 Granby Street loan to \$15,940,984.88.

18. With the renovations far from complete, on or about July 8, 2009, Conspirator B and Conspirator C caused the Bank to approve a \$1,900,000 loan to ERIC H. MENDEN and Conspirator A. Conspirator B and Conspirator C caused the Bank to fund this second loan and the full amount was disbursed by September 15, 2009.

19. In or about October 2009, Conspirator B and Conspirator C authorized ERIC H. MENDEN and Conspirator A to overdraw their demand deposit accounts by approximately \$620,000 purportedly to pay for the renovation of 345 Granby Street.

20. On or about October 21, 2009, Conspirator B and Conspirator C caused the Bank to increase the second loan to ERIC H. MENDEN and Conspirator A by \$550,000 to \$2,450,000.

On or about November 21, 2009, Conspirator B and Conspirator C caused the Bank to fully fund the additional \$550,000 and used the loan proceeds to pay down the negative balances in ERIC H. MENDEN and Conspirator A's demand deposit accounts.

The Purchase of Bank-Owned Property and Other Favors

21. On or about January 17, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A, through their entity Norfolk Property Development, LLC, purchased Bank-owned property located at 5573 Princess Anne Road in Virginia Beach, Virginia. From on or about January 17, 2008 through on or about March 4, 2008, Conspirator B and Conspirator C caused the Bank to fund a \$226,500 loan to facilitate this fraudulent transaction. At the time the Bank funded this loan in January 2008, ERIC H. MENDEN and Conspirator A jointly owed the Bank approximately \$23,000,000.

22. On or about June 13, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased property located on Carolyn Way in Lexington, Virginia owned by Conspirator D, another Bank insider. From on or about May 28, 2008 through June 13, 2008, Conspirator B and Conspirator C caused the Bank to fund a \$399,000 loan to facilitate this fraudulent transaction.

23. On or about June 13, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased property located on Crawford Avenue in Portsmouth, Virginia owned by Conspirator D, another Bank insider. Conspirator B and Conspirator C caused the Bank to fund a \$199,000 loan to facilitate this fraudulent transaction.

24. On or about June 27, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased at a foreclosure auction Bank-owned property located at 1001 Monticello Avenue in Norfolk, Virginia. Conspirator B instructed ERIC H. MENDEN and

Conspirator A to bid up to a specific price so that the Bank could pay off the underlying loan for the property. Conspirator B and Conspirator C caused the Bank to fund an \$899,000 loan to facilitate this fraudulent transaction.

25. On or about July 25, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased at a foreclosure auction Bank-owned property located at 107 E. 39th Street in Norfolk, Virginia. Again, Conspirator B instructed ERIC H. MENDEN and Conspirator A to bid up to a specific price so that the Bank could pay off the underlying loan for the property. Conspirator B and Conspirator C caused the Bank to fund a \$231,500 loan to facilitate this fraudulent transaction.

26. On or about November 3, 2008, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A purchased a condominium located on York Street in Norfolk, Virginia owned by Conspirator D, another Bank insider. Conspirator B and Conspirator C caused the Bank to fund a \$274,000 principal advance on a separate loan to provide ERIC H. MENDEN and Conspirator A money to purchase the property.

27. On or about January 7, 2009, Conspirator B and Conspirator C caused the Bank to fund a \$250,000 loan to ERIC H. MENDEN and Conspirator A using as collateral the condominium located on York Street.

28. On or about November 10, 2008, ERIC H. MENDEN and Conspirator A paid for a \$6,413.90 upgrade to Conspirator C's kitchen.

29. On or about June 9, 2010, at the request of Conspirator B, ERIC H. MENDEN, through a nominee borrower, purchased Bank-owned property located on Crawford Parkway in Portsmouth, Virginia. From on or about April 30, 2010 to on or about June 9, 2010 Conspirator

B and Conspirator E caused the Bank to fund a \$202,500 loan to facilitate this fraudulent transaction.

30. On or about June 28, 2010, at the request of Conspirator B, ERIC H. MENDEN, through a nominee borrower, purchased three parcels of Bank-owned property. From on or about May 17, 2010 to June 28, 2010, Conspirator B and Conspirator E caused the Bank to fund a \$1,325,000 loan to facilitate this fraudulent transaction.

31. On or about August 31, 2010, at the request of Conspirator B, ERIC H. MENDEN, through a nominee borrower, purchased Bank-owned property located on Hough Avenue in Norfolk, Virginia. From on or about August 12, 2010 to on or about August 31, 2010, Conspirator B and Conspirator E caused the Bank to fund a \$108,000 loan to facilitate this fraudulent transaction.

32. In or about October 2010, at the request of Conspirator B, ERIC H. MENDEN and Conspirator A, through a nominee borrower, attempted to purchase five properties in Alabama, owned in part by Conspirator D, a bank insider. Conspirator B and Conspirator E attempted to cause the Bank to fund a \$1,310,466 loan to facilitate this fraudulent transaction.

(In violation of Title 18, United States Code, Section 371).

FORFEITURE

1. Defendant ERIC H. MENDEN, when convicted of counts one and three of the criminal information, shall forfeit to the United States, as part of the sentencing pursuant to Federal Rule of Criminal Procedure 32.2:

a. Any property, real or personal, which constitutes or is derived from proceeds traceable to, or obtained, directly or indirectly, as a result of, such violation, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 982(a)(2), and 28 U.S.C. § 2461(c);

b. Any other property belonging to the defendant, up to the value of the property subject to forfeiture, if any property subject to forfeiture, as a result of any act or omission of the defendant: (a) cannot be located upon the exercise of due diligence; (b) has been transferred to, sold to, or deposited with a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; or (e) has been commingled with other property that cannot be divided without difficulty.

2. The property subject to forfeiture under paragraph 1 includes, but is not limited to the following property:

- 932-A Aberdeen Lane, Chesapeake, Virginia
- 220 Hurdle Drive, Chesapeake, Virginia
- 41091 Ocean View Drive, Avon, North Carolina
- 1336 Westover Avenue, Norfolk, Virginia
- Defendant's interest in 345 Granby, LLC
- Defendant's interest in Mercer Building, LLC
- Defendant's interest in NA/NOR, LLC
- Defendant's interest in 430 Boush Street, LLC

- 2007 Chevrolet Suburban, VIN No. 3GNFK16397G318689
- 2004 Chevrolet Suburban, VIN No. 3GNFK16Z84G344023
- A sum of money at least \$49,000,000 which represents the proceeds of the charged offenses, that, upon entry of an order of forfeiture, shall be reduced to a money judgment.

(All in accordance with Title 18, United States Code, Sections 982(a)(2) and 981(a)(1)(C), as incorporated by Title 28, United States Code, Section 2461(c); and Title 21, United States Code, Section 853(p).)

Neil H. MacBride
United States Attorney

By: Melissa E. O'Boyle
Melissa E. O'Boyle
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
8000 World Trade Center
101 West Main Street
Norfolk, VA 23510
Phone: (757) 441-6331
Fax: (757) 441-6689
melissa.oboyle@usdoj.gov

By: Katherine Lee Martin / KLM
Katherine Lee Martin
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
Main Street Centre
600 E. Main Street, Suite 1800
Richmond, Virginia 23219-2447
Phone: (804) 819-5400
Fax: (804) 819-7417
katherine.martin@usdoj.gov